

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

FINAL AGENCY ORDER O-10-023

**IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF
ESURANCE INSURANCE COMPANY**

Respondent

THIS MATTER comes before the Colorado Commissioner of Insurance (the "Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance (the "Division") of Esurance Insurance Company (the "Respondent"), pursuant to §§ 10-1-204 and 10-1-210, C.R.S. The Commissioner has considered and reviewed the market conduct examination report dated May 5, 2009, (the "Report"), relevant examiners' work papers, all written submissions and rebuttals, and the recommendations of staff. The Commissioner finds and orders as follows:

FINDINGS OF FACT

1. At all relevant times, the Respondent was licensed by the Division as a property and casualty insurer.
2. In accordance with §§ 10-1-204, 10-1-210 and 10-3-1106, C.R.S., on May 5, 2009, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2006 to November 30, 2008.
3. In scheduling the market conduct examination and in determining its nature and scope, the Commissioner considered such matters as complaint analyses, underwriting and claims practices, pricing, product solicitation, policy form compliance, market share analyses, and other criteria as set forth in the most recent available edition of the Market Regulation Handbook adopted by the National Association of Insurance Commissioners, as required by § 10-1-203(1), C.R.S.
4. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the Market Regulation Handbook adopted by the National Association of Insurance Commissioners and the Colorado insurance examiners' handbook. The Commissioner also employed other guidelines and procedures that she deemed appropriate, pursuant to § 10-1-204(1), C.R.S.

5. The market conduct examiners prepared a Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.
6. Respondent delivered to the Division written submissions and rebuttals to the Report.
7. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals, and all relevant portions of the examiners' work papers.

CONCLUSIONS OF LAW AND ORDER


8. Unless expressly modified in this Final Agency Order ("Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
9. Issue H1 concerns the following violation: Failure, in some cases, to offer to exclude a named driver and to disclose the modified premium that would result from such exclusion in non-renewal, cancellation, and premium increase notices. The Respondent shall provide evidence to the Division that it has implemented necessary changes to ensure that whenever a non-renewal, cancellation, or premium increase is due to the driving record of one or more but less than all persons insured under the policy, an offer to exclude the named driver(s) that justified the action, and information regarding what the premium would be with such person(s) excluded is included in all nonrenewal, cancellation, and premium increase notices as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
10. Issue H2 concerns the following violation: Failure, in some cases, to include a clear and specific reason, including the underwriting rule, policy or guideline which is the basis for the Company's action in non-renewal, cancellation, and premium increase notices. The Respondent shall provide evidence to the Division that it has implemented necessary changes to ensure that a clear and specific reason, including the underwriting rule, policy or guideline which is the basis for taking the action is included in all non-renewal, cancellation, and premium increase notices as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning

this violation.

11. Issue H3 concerns the following violation: Failure, in some cases, to provide notice of the insured's right to replace the insurance through an assigned risk plan in the notices of premium increase. The Respondent shall provide evidence to the Division that it has implemented necessary changes to its premium increase notices to ensure that they include information regarding the right to the insured to replace the insurance through an assigned risk program as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
12. Issue H4 concerns the following violation: Failure, in some cases, to comply with the notice requirements of the "Fair Credit Reporting Act" in the notices of premium increases. The Respondent shall provide evidence to the Division that it has implemented necessary changes to its premium increase notices to ensure that they comply with the notice requirements of the "Fair Credit Reporting Act" as required by Colorado insurance law. The Division's records indicate that the Respondent has complied with the corrective actions ordered concerning this violation.
13. Pursuant to § 10-1-205(3)(d), C.R.S, the Respondent shall pay a civil penalty to the Division in the amount of two hundred eighty-eight thousand and no/100 dollars (\$288,000.00) for the cited violations of Colorado law. This fine was calculated in accordance with Division guidelines for assessing penalties and fines, including Division Bulletin No. B-1.3, originally issued on January 1, 1998, re-issued May 8, 2007. Said penalty shall be assessed a 10% surcharge up to \$200,000.00, or \$20,000.00, pursuant to 24-34-108, C.R.S. for a total balance due of \$308,000.00 which will be due to the Division within 30 days of the signing of this Final Agency Order. This surcharge will be used to fund the development, implementation and maintenance of a consumer outreach and education program.
14. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related Order.

15. Unless otherwise specified in this Order, all requirements with this Order shall be completed within thirty (30) days of the date of this Order. Respondent shall submit written evidence of compliance with all requirements to the Division within the thirty (30) day time frame, except where Respondent has already complied, as specifically noted in the Order. Copies of any rate and form filings shall be provided to the rate and forms section with evidence of the filings sent to the market conduct section. All self audits, if any, shall be performed in accordance with Division's document, 'Guidelines for Self Audits Performed by Companies'. Unless otherwise specified in this Order, all self audit reports must be received within ninety (90) days of the Order, including a summary of the findings and all monetary payments to covered persons.
16. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.
17. Copies of the examination report, and this final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

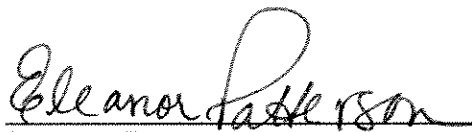
WHEREFORE: It is hereby ordered that the findings and conclusions contained in the Report dated May 5, 2009, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this 2nd day of September, 2009.


Marcy Morrison
Commissioner of Insurance

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of September, 2009, I caused to be deposited the **FINAL AGENCY ORDER NO. O-10-023 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF ESURANCE INSURANCE COMPANY**, in the United States Mail via certified mailing with postage affixed and addressed to:

Gary C. Tolman, President
Esurance Insurance Company
650 Davis Street
San Francisco, CA 94111

A handwritten signature in cursive script, reading "Eleanor Patterson", written over a horizontal line.

Eleanor Patterson
Market Regulation Administrator
Division of Insurance